

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

Hearing Date: September 4, 2014  
Time: 2:00 p.m.

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In re

MANUEL PINEDA,  
ZAIIRA PINEDA,

Case No. 12-11276

Debtors.

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**NOTICE OF HEARING ON DEBTORS' MOTION FOR AN ORDER APPROVING  
THE FINAL LOAN MODIFICATION ISSUED BY NATIONSTAR MORTGAGE LLC  
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

PLEASE TAKE NOTICE, that a hearing to consider the above captioned Debtors' Motion for an Order Approving the Final Loan Modification Issued by Nationstar Mortgage LLC pursuant to Federal Rule of Bankruptcy Procedure 9019 shall be conducted before the Honorable Allan L. Gropper, U.S. Bankruptcy Judge, on September 4, 2014, at 2:00 p.m., in the United States Bankruptcy Court, Southern District of New York, One Bowling Green, Courtroom 617, New York, NY 10004-1408, or as soon thereafter as counsel can be heard. The Debtors may request such other and further relief as is just and equitable.

**PLEASE TAKE FURTHER NOTICE**, that any objection to the Motion must be in writing, and must state with particularity the grounds for the objection. The objection must be filed with the Clerk of the Bankruptcy court electronically at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) and a copy of the objection must be served upon or delivered to 1) Judge Gropper's Chambers and 2) the undersigned counsel for the Debtors as to be received no later than seven days before the hearing date.

Dated: July 28, 2014  
Astoria, New York

/s/ Norma E. Ortiz  
Norma E. Ortiz, Esq.  
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Debtors' Counsel

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re

MANUEL PINEDA,  
ZAIRA PINEDA,

Case No. 12-11276

Debtors.

Chapter 13

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**DEBTORS' MOTION FOR AN ORDER APPROVING THE FINAL LOAN  
MODIFICATION ISSUED BY NATIONSTAR MORTGAGE LLC PURSUANT TO  
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

Manuel Pineda and Zaira Pineda (the "Debtors"), by and through their attorneys Ortiz &  
Ortiz, L.L.P., hereby states as follows:

**BACKGROUND**

1. The Debtors filed a Chapter 13 petition on March 29, 2012.
2. The Debtors own the real property located at 3016 Barkley Avenue, Bronx, New York 10463 (the "Property"). The first mortgage on the Property is held by Deutsche Bank National Trust Company, as Trustee for Harborview Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-9 ("Deutsche Bank").
2. After the case was commenced, the Debtors entered the loss mitigation program with the servicer for Deutsche Bank to modify their mortgage on the Property. The initial servicer was Bank of America, N.A. ("BofA"). The Debtors submitted their loan modification packages to BofA in 2013 and received a trial loan modification on June 10, 2013 (the "BofA Trial Modification").

3. After the Debtor's completed the BofA Trial Modification, Deutsche Bank replaced BofA with Nationstar Mortgage LLC ("Nationstar"). After initially agreeing to honor the BofA Trial Modification, Nationstar issued the Debtors a second trial loan modification on December 11, 2013 (the "Nationstar Trial Modification").

4. The Debtors completed the Nationstar Trial Modification and received a final loan modification from Nationstar on May 2, 2014 (the "Final Loan Modification"). A copy of the proposed loan modification is annexed as Exhibit A. The Final Loan Modification made the following changes to the Debtors' mortgage:

- (A) Changed the interest rate from an adjustable rate to a fixed rate of 4.5%;
- (B) The new monthly principal and interest payment will be \$1,882.24;
- (C) The new principal balance of the mortgage will be \$418,682.82<sup>1</sup>, after the addition of \$3,605.51 for current interest and \$1,714.85 escrow advances to the unpaid principal balance due prior to the Final Loan Modification;
- (D) The total monthly mortgage payments changed from \$3,241.53 to \$3,181.55<sup>2</sup>.

5. After reviewing the terms of the Final Loan Modification, the Debtors accepted the modification on May 27, 2014, and began to make the new mortgage payments as of June 1, 2014.

6. On July 28, 2014, Nationstar filed a Notice of Mortgage Payment Change to reflect the changes of the Final Loan Modification.

### **JURISDICTION**

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<sup>1</sup> This amount includes any all amounts and arrearages that will be past due of June 1, 2014.

<sup>2</sup> The Final Loan Modification payment includes an escrow shortage due to increases in the Property's real estate taxes payable over 12 months.

7. The Court has jurisdiction over this motion. This is a core proceeding arising under 28 U.S.C. § 157(b)(2)(B). Venue of this motion is proper pursuant to 28 U.S.C. § 1409. The statutory predicates for relief include 11 U.S.C. §§ 105 and Fed. Rules of Bankr. Proc. 3012 and 9019.

### **RELIEF REQUESTED**

8. The Debtors respectfully request that the Court enter an order permitting the Debtors to enter into the Final Loan Modification. The Final Loan Modification changed the volatile nature of the Debtors' adjustable rate mortgage to a fixed rate mortgage. The Debtors believe that this change will permit them to successfully complete their Chapter 13 Plan. Therefore, the Debtors believe the Final Loan Modification is in the best interest of their bankruptcy estate.

#### **A. The Court Should Approve the Final Loan Modification**

9. Fed. R. Bankr. P. 9019(a) provides in relevant part that a court may approve a settlement or compromise after notice and a hearing. Bankruptcy Rule 9019, is unique in that it does not have a parallel section in the Code; it has a "clear purpose ... to prevent the making of concealed agreements which are unknown to the creditors and unevaluated by the court." In re Iridium Operating LLC, 478 F.3d 452, 462 (2d Cir. 2007) (quoting In re Masters, Inc., 141 B.R. 13, 16 (Bankr. E.D.N.Y.1992)). Before determining whether to approve a settlement, a court must "canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness." In re Drexel Burnham, Lambert Group, Inc., 134 B.R. 493, 497 (Bankr. S.D.N.Y. 1991). A court may approve a settlement or compromise if it finds that the proposed compromise is fair and reasonable and in the best interests of the bankruptcy estate. In re Refco, 50 F.3d 109, 119 (2d Cir. 2007); In re Adelphia Communications Corp., 364 B.R. 518, 524

(Bankr. S.D.N.Y. 2007).

10. The proposed Final Loan Modification provides the best outcome for both the Debtors and their creditors. The Debtors' home is wholly encumbered by the Deutsche Bank's mortgage, so the changes in the Final Loan Modification will not adversely affect their other creditors. In addition, the Final Loan Modification added all the pre-petition amounts due to Deutsche Bank to the new unpaid principal balance. Therefore, the remaining creditors will receive a greater recovery under the plan because no additional payments will be made to Deutsche Bank. For these reasons, the Debtors request that the Court approve the Final Loan Modification.

11. No prior motion of this nature has been filed by the Debtors.

**WHEREFORE**, the Debtors respectfully request that the Court grant the relief requested herein and grant such other and further relief as is just.

Dated: July 28, 2014  
Astoria, New York

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